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IN THE COURT OF APPEALS OF INDIANA

VIRGIL RASSNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-0612-CR-563
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Stephen S. Spindler, Judge
Cause No. 57D01-0605-FD-91

June 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Virgil Rassner appeals his sentence of two and one-half years for Class D felony battery of a law enforcement officer. We affirm.

Issue

The sole issue Rassner raises on appeal is whether his sentence is inappropriate.

Facts

Rassner had been drinking heavily when he turned himself in on an outstanding warrant. He had been held in the Noble County jail for a few days when, on March 11, 2006, he ran from his cell block while correctional officers were distributing medication to the inmates. Correctional Officer Sean Lundy took Rassner by the arm and escorted Rassner back into the cell block. Rassner returned willingly, but then punched Officer Lundy in the face at least four times. Officer Lundy experienced pain and had a mark on his face from Rassner's knuckles. Rassner continued to fight Officer Lundy and two other correctional officers, even after the officers attempted to subdue him with pepper spray. The officers eventually were able to subdue Rassner.

Rassner was charged with Class D felony battery of a law enforcement officer. At trial, Rassner testified that he had been "blacking in and out" for a few days prior to the incident due to his detoxification from alcohol. Tr. p. 28. He did not recall fighting with the officers. The trial court found him guilty and sentenced him to two and one-half years incarceration.

Analysis

Rassner argues that his sentence is inappropriate in light of the nature of the offense and his character under Indiana Appellate Rule 7(B). Rassner committed this offense after our legislature replaced the "presumptive" sentencing scheme with the present "advisory" sentencing scheme. We are awaiting guidance from our supreme court as to how appellate review of sentences under the new "advisory" scheme should proceed and whether trial courts must continue issuing sentencing statements explaining the imposition of any sentence other than an advisory sentence. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). This court has split on the issue of whether such statements still must be issued. Compare Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied (holding that a trial court is under no obligation to find or weigh any aggravating or mitigating circumstances) with McMahon v. State, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (holding sentencing statements must be issued any time trial court deviates from advisory sentence).

Whether or not sentencing statements are required, such statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). Gibson, 856 N.E.2d at 147. The trial court here did issue a sentencing statement, and we will utilize it to assist us in determining whether the sentence imposed here was inappropriate. Id. Under Indiana Appellate Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. We perform this review while considering as part of that equation the findings made by the trial court in its sentencing statement. We

understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. See Gibson, 856 N.E.2d at 149; see also McMahon, 856 N.E.2d at 750 (noting that review under Rule 7(B) is not limited "to a simple rundown of the aggravating and mitigating circumstances found by a trial court.").

Rassner was convicted of Class D felony battery of a law enforcement officer. The sentencing range for a Class D felony is six months to three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7. The court identified as aggravating factors that Rassner had a criminal history, that he was unwilling to deal with his alcohol problem, and the length of time that Rassner had been addicted to alcohol. The court named as a mitigating factor Rassner's willingness to admit to his alcohol problem. The court found that the aggravators outweighed the mitigators and sentenced Rassner to two and one-half years incarceration.

Rassner asserts that the sentence is inappropriate in light of his character because he has an alcohol addiction that he has been trying to control, "albeit unsuccessfully." Appellant's Br. p. 4. Trial courts often treat substance abuse as a mitigating circumstance; however, courts can instead treat it as an aggravating circumstance. Iddings v. State, 772 N.E.2d 1006, 1008 (Ind. Ct. App. 2002), trans. denied. The court recognized as a mitigator that Rassner admitted to his alcohol problem and found as an aggravator that he had not dealt with the problem. Rassner's character reveals that he has several criminal convictions for alcohol-related crimes. In 2001, he received two convictions for alcohol consumption as a minor; in 2003 and 2004, he received two convictions for operating while intoxicated; and in 2005, he received one conviction for

public intoxication. The only treatment for alcohol that Rassner has received was court-ordered. He went to Alcoholics Anonymous voluntarily but quit when he believed that he had control over his drinking, and he subsequently relapsed. Rassner's previous unsuccessful attempts to control his drinking do not persuade us that the sentence is inappropriate in light of his character.

Rassner also argues that he has a young child whom he is attempting to support. This is a proper mitigating factor a court may consider. See I.C. § 35-38-17.1(b)(10). However, in light of the nature of the offense and his character, we do not think that the hardship on his child warrants a reduced sentence. In addition to the five alcohol-related convictions, Rassner has also previously been convicted of battery and theft. These convictions began when he was nineteen years and span the last seven years. The current offense occurred in the Noble County jail and was a sudden physical attack on a correctional officer. Rassner was so difficult to subdue that it took pepper spray and three correctional officers to restrain him. We conclude that in light of the nature of the offense and Rassner's character, a sentence of two and one-half years, which is less than the maximum possible sentence, is not inappropriate.

Conclusion

Rassner's sentence of two and one-half years for Class D felony battery of a law enforcement officer is not inappropriate. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.